

**PART II**  
**DEFINITIONS**

**A. MINER**

**1. GENERAL**

The issue of whether claimant is a "miner" is a factual finding to be made by the administrative law judge. *Price v. Peabody Coal Co.*, 7 BLR 1-671 (1985). The Act defines a "miner" as:

any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. Such term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment.

30 U.S.C. §902(d); see also 20 C.F.R. §725.101(a)(26); *Ray v. Williamson Shaft Contracting Co.*, 14 BLR 1-105 (1990)(en banc); *Swinney v. Director, OWCP*, 7 BLR 1-524 (1984); *Johnson v. Weinberger*, 389 F.Supp. 1296 (S.D. W.Va. 1974).

Prior to the Black Lung Benefits Reform Act of 1977 (Reform Act) a self-employed individual could not be a miner. An employer-employee relationship had to be established. *Winton v. Director, OWCP*, 2 BLR 1-187 (1979). The Reform Act, however, eliminated this requirement. See 30 U.S.C. §902(d). Section 725.202(a) of the regulations implementing the Reform Act specifically provides that an individual who is self-employed or who is an independent contractor and otherwise meets the requirements of that paragraph will be considered a miner. 20 C.F.R. §725.202(a); *Smith v. Director, OWCP*, 8 BLR 1-258 (1985); *Lynch v. Director, OWCP*, 6 BLR 1-1088 (1984).

Where there is doubt regarding whether a miner or operator should be covered under the Act, such doubt should be resolved in favor of coverage. See *Marshall v. Stoudt's Ferry Preparation Co.*, 602 F.2d 589 (3d Cir. 1979). The administrative law judge erred in finding that claimant's work as a welder did not qualify as coal mine employment on the grounds that it did not involve employment for a coal operator. *Jones v. Director, OWCP*, 7 BLR 1-279 (1984).

## CASE LISTINGS

[clerical employee] **Adelsberger v. Mathews**, 543 F.2d 82 (7th Cir. 1976).

[coke oven workers] **Morris v. Director, OWCP**, 6 BLR 1-653 (1983); *see also* **Sexton v. Mathews**, 538 F.2d 88 (4th Cir. 1976).

[digging house coal] **Foster v. Director, OWCP**, 2 BLR 1-294 (1979).

[coal prospector] **Skewes v. Consolidation Coal Co.**, 2 BLR 1-705 (1979).

[lab technician gathering coal samples] **Bower v. Amigo Smokeless Coal Co.**, 2 BLR 1-729 (1979), *aff'd sub nom. Amigo Smokeless Coal Co. v. Director, OWCP*, 642 F.2d 68, 2 BLR 2-68 (4th Cir. 1981).

["miner" while on sick leave] **Verdie v. Price River Coal Co.**, 6 BLR 1-1067 (1984).

[welder not employed by coal operator] **Jones v. Director, OWCP**, 7 BLR 1-279 (1984).

[producer of combustible briquettes] **Zimmerman v. Director, OWCP**, No. 84-3054 (3d Cir. 1984)(unpublished).

[claimant burden: establish extracting coal at a clay mine not merely to clear way to clay seam] **Kephart v. Director, OWCP**, 8 BLR 1-185 (1985); **Wisor v. Director, OWCP**, 6 BLR 1-727 (1984), *aff'd* 748 F.2d 176, 7 BLR 2-46 (3d Cir. 1984).

[coal mining as a substantial part of work] **Hinton v. Director, OWCP**, No. 84-3299 (6th Cir. Mar. 22, 1985)(unpublished).

[childhood work picking coal/family use] **Smith v. Director, OWCP**, 8 BLR 1-258 (1985).

## DIGESTS

The fact that employer received a portion of its coal from a mine that is a wholly owned subsidiary was found to have no bearing on the administrative law judge's determination that claimant, who loaded fully processed coal for use in making paper, did not satisfy the "status" and "function" requirements. *See* **Foreman v. Director, OWCP**, 8 BLR 1-79 (1985), *aff'd*, 794 F.2d 569, 9 BLR 2-90 (11th Cir. 1986); **Straight v. U.S. Steel Corp.**, 8 BLR 1-14 (1985).

The Eleventh Circuit held that claimant was not a miner engaged in coal preparation since he was employed at an ore mine power plant, a consumer of coal. **Foreman v. Director, OWCP**, 794 F.2d 569, 9 BLR 2-90 (11th Cir. 1986).

A delivery man carrying lunches to underground employees is not a "miner" under the Act. **Frost v. Director, OWCP**, 821 F.2d 649 (6th Cir. 1987).

Claimant is not a "miner" while on strike. **Director, OWCP v. Cargo Mining Co.**, Nos. 88-3531 and 3578 (6th Cir. May 11, 1989)(unpub.).

The Act covers pit lignite miners. **Consolidation Coal Co. v. McGrath**, 866 F.2d 1004, 12 BLR 2-152 (8th Cir. 1989).

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